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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,727	04/26/2006	Antonio Telhado Pereira	0315-0162PUS1	9762
2292 7590 11/14/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER				
BOLDEN, ELIZABETH A				
ART UNIT		PAPER NUMBER		
1793				
NOTIFICATION DATE		DELIVERY MODE		
11/14/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

### Office Action Summary

**Application No.**

10/540,727

**Applicant(s)**

PEREIRA ET AL.

**Examiner**

ELIZABETH A. BOLDEN

**Art Unit**

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 April 2006.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1 and 2 is/are rejected.  
7) ☒ Claim(s) 1 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 12 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date 7/12/05  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

#### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Information Disclosure Statement***

The IDS submitted 12 July 2005 has been considered by the Examiner.

#### ***Drawings***

The original drawings received on 12 July 2005 are accepted by the Examiner.

#### ***Specification***

The disclosure is objected to because of the following informalities:

In several places in the Abstract and specification the European style of making decimal places for numerical values with a comma has been used for example in Table 1 recites "5,2" where it should read "5.2". These numerical values should be corrected.

Appropriate correction is required.

#### ***Claim Objections***

Claim 1 is objected to because of the following informalities:

In several places in claim 1, the European style of making decimal places for numerical values with a comma has been used for example in line 4 recites "0,1" where it should read "0.1". These numerical values should be corrected.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102 and 35 USC § 103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mennemann et al., U.S. Patent 4,562,161.

Mennemann et al. discloses a glass having overlapping ranges of the components as recited in claims 1 and 2. See Abstract and column 2, lines 27-45 and column 6, lines 17-19. Mennemann et al. discloses a glass having overlapping ranges of refractive index, density, and chemical resistance as recited in claim 1. See Abstract and column 2, lines 10-19. The compositional and property ranges of Mennemann et al. are sufficiently specific to anticipate the glass as recited in claims 1-2. See MPEP 2131.03.

However, Mennemann et al. does not disclose any examples that anticipate claims 1 and 2.

Therefore, in the alternative to the § 102 rejection the reference discloses a composition that has overlapping ranges of components with the instant claimed glass, and overlapping ranges have been held to establish *prima facie* obviousness. See MPEP 2144.05.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clement et al., German Patent, DE 43 09 701 in view of Mennemann et al., U.S. Patent 4,562,161.

The Derwent Abstract 1994-192746 accompanies this action. In reciting this rejection, the examiner will cite the Abstract.

Clement et al. teach a lead-free crystal glass having overlapping ranges of components with instant claims 1 and 2. See Abstract of Clement et al. Clement et al. have overlapping ranges of refractive index, density, and chemical resistance. See Abstract. Overlapping ranges have been held to establish *prima facie* obviousness. See MPEP 2144.05.

Clement et al. fail to teach that the glass contains As<sub>2</sub>O<sub>3</sub>.

Mennemann et al. teach a lead free crystal glass which uses  $As_2O_3$  as a refining agent. See column 6, lines 17-19.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the crystal glass of Clement et al. as suggested by Mennemann et al. because the resultant glass would have the superior fining properties.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH A. BOLDEN whose telephone number is (571)272-1363. The examiner can normally be reached on 10 am to 6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Elizabeth A. Bolden  
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Examiner  
Art Unit 1793

EAB  
9 November 2008

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Primary Examiner, Art Unit 1793